

## 2011 DRAFTING REQUEST

### Assembly Amendment (AA-AB466)

Received: **01/17/2012**

Received By: **mshovers**

Wanted: **As time permits**

Companion to LRB:

For: **Jeremy Thiesfeldt (608) 266-3156**

By/Representing: **Hariah**

May Contact:

Drafter: **mshovers**

Subject: **Tax, Individual - dedct/sbtrct**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Thiesfeldt@legis.wi.gov**

Carbon copy (CC:) to:

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#### Pre Topic:

No specific pre topic given

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#### Topic:

Individual income tax subtraction for Coverdell education savings account contributions

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#### Instructions:

See attached. Address concerns from DOR tech. memo. 1) Eliminate the double benefit potential; 2) Add a penalty provision for non-qualified distributions

---

#### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/1	mshovers 01/17/2012	jdyer 01/18/2012	phenry 01/24/2012	_____	ggodwin 01/24/2012	ggodwin 01/24/2012	
		jdyer 01/24/2012		_____			
		kfollett 01/24/2012		_____			
/2	mshovers 01/25/2012	kfollett 01/25/2012	phenry 01/25/2012	_____	lparisi 01/25/2012	lparisi 01/25/2012	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/3	mshovers 02/01/2012	jdye 02/02/2012	jfrantze 02/02/2012	_____ _____ _____	ggodwin 02/02/2012 ggodwin 02/02/2012	ggodwin 02/02/2012	

FE Sent For:

&lt;END&gt;

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By/Representing: Hariah

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1/1	mshovers 01/17/2012	jdye 01/18/2012 jdye 01/24/2012 kfollett 01/24/2012	phenry 01/24/2012		ggodwin 01/24/2012	ggodwin 01/24/2012	
1/2	mshovers 01/25/2012	kfollett 01/25/2012	phenry 01/25/2012		lparisi 01/25/2012	lparisi 01/25/2012	

13 MES 2/1/12

Jacket  
is  
back

Vers.      Drafted      Reviewed      Typed      Proofed      Submitted      Jacketed      Required

FE Sent For:

**<END>**

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/1	mshovers 01/17/2012	jdye 01/18/2012	phenry 01/24/2012	_____	ggodwin 01/24/2012	ggodwin 01/24/2012	
		jdye 01/24/2012		_____			
		kfollett 01/24/2012		_____			

FE Sent For:

12 MES 1/25/12 12/5f 1/25 PH

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/?	mshovers	1/15/12		Jm + Plt			
1/1 MES	1/17/12	24		1/24			

FE Sent For:

&lt;END&gt;

## Shovers, Marc

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**From:** Hutkowski, Hariah  
**Sent:** Tuesday, January 17, 2012 1:41 PM  
**To:** Shovers, Marc  
**Cc:** Julian, Jamie  
**Subject:** FW: Re: Assembly Bill 466 (Coverdell Education Savings Accounts)

Marc,

Please write up an amendment for this bill and SB 364. Thank you!

Hariah Hutkowski  
*Legislative Assistant*  
**Rep. Thiesfeldt's office**  
1-888-529-0052  
FAX: 608-282-3652

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**From:** Wagner, Michael W - DOR [<mailto:MichaelW.Wagner@revenue.wi.gov>]  
**Sent:** Thursday, January 12, 2012 5:56 PM  
**To:** Rep.Thiesfeldt  
**Cc:** Hutkowski, Hariah; Julian, Jamie  
**Subject:** Re: Assembly Bill 466 (Coverdell Education Savings Accounts)

Dear Representative Thiesfeldt,

I enjoyed meeting with you earlier this week. Per our discussion, I have provided drafting language that you could choose to pursue if it is consistent with your legislative intent for Assembly Bill 466.

Suggestion 1) Eliminate the double benefit potential (deduction both for the contribution to a CESA and under the tuition deduction for higher education expenses) by creating 71.05(6)(b)28.i.

- (i) No modification may be claimed under this subdivision for an amount paid for tuition expenses and mandatory student fees, as described under this subdivision, if the source of the payment is an amount withdrawn from a Coverdell Education Savings Account, as described under 26 USC 530, and for which a subtraction was claimed under sec. 71.05(6)(b)48.

Suggestion 2) Wisconsin law currently does not provide a penalty for distributions from a Coverdell Education Savings Account that are used for non-qualified purposes. AB 466, as currently drafted, also does not create a state penalty for non-qualified distributions. However, the IRS has penalty equal to 10% of the non-qualified distribution. This 10% penalty only relates to the earnings of the account that had been tax exempt. It does not relate to the full distribution.

However, the state does impose its own penalty on non-qualified distributions for certain other preferred accounts, including Health Savings Accounts and Individual Retirement Accounts. For those accounts, the Wisconsin penalty is equal to 33% of the federal penalty.

If you would like to create a parallel for non-qualified distributions from Coverdell Savings Accounts, you could create a new section of statutes, 71.83(1)(cf):

71.83(1)(cf) Coverdell Education Savings Accounts. Any person who is liable for a penalty for federal income tax purposes under section sec. 530(d)(4) of the Internal Revenue Code is liable for a penalty equal to 33 percent of that penalty. The department of revenue shall assess, levy, and collect the penalty under this paragraph as it assesses, levies, and collects taxes under this chapter. A person subject to the penalty under sec. 530(d)(4) is also subject to a

*should be 33, per Mike Wagner*  
penalty of 3.3 percent on any portion of the distribution for which a subtraction was claimed under sec. 71.05(6)(b)48.

Please note, the underlined portion above would also apply the 33% penalty against the deduction benefit that this bill creates. The policy argument for creating this portion of the penalty is that if Wisconsin is going to create an additional tax benefit for contributing to a Coverdell Account, then providing a penalty against non-qualified use of this benefit would be consistent with the legislative intent to promote the expanded, appropriate use of the benefit. (In other words, if we're increasing the reward, there should be a penalty for those who use the increased incentive but do so for non-educational purposes).

Without adding a penalty, which is how the bill reads now, an individual could claim this new tax deduction, use the money for an unrelated expense, and not owe any WI penalty. In those cases, a person could use a Coverdell Account as a shelter from state taxes with no intent to use it for education (however, the federal penalty would still apply to the untaxed earnings of the account). Creating 71.83(1)(cf) as outlined above would address this issue.

Please let me know if you have any questions.

Regards,

Mike Wagner  
Legislative Advisor, Dept. of Revenue  
608-266-7817

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State of Wisconsin  
2011 - 2012 LEGISLATURE



LRBa2132/7  
MES. *bf*

*Today possible*

*bf*  
*fmr*

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

**ASSEMBLY AMENDMENT ,**

**TO 2011 ASSEMBLY BILL 466**

*Fix request sheet*

*Wanted: soon*

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 2, line 1: before that line insert:

3 **"SECTION 1e.** 71.05 (6) (b) 28. i. of the statutes is created to read:

4 71.05 (6) (b) 28. i. No modification may be claimed under this subdivision for  
5 an amount paid for tuition expenses and mandatory student fees, as described under  
6 this subdivision, if the source of the payment is an amount withdrawn from a  
7 Coverdell Education Savings Account, as described under 26 USC 530, and for which  
8 a subtraction is claimed under subd. 48."

*#. p. 2, line 1: delete "SECTION 1e." and substitute "SECTION 1m."*

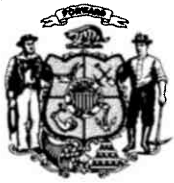
9 **2.** Page 2, line 5: after that line insert:

10 **"SECTION 2m.** 71.83 (1) (cm) of the statutes is created to read:

11 71.83 (1) (cm) *Coverdell education savings accounts.* Any person who is liable  
12 for a penalty for federal income tax purposes under section 530 (d) (4) of the Internal

1 Revenue Code is liable for a penalty equal to 33 percent of that penalty. The  
2 department of revenue shall assess, levy, and collect the penalty under this  
3 paragraph as it assesses, levies, and collects taxes under this chapter. A person who  
4 is subject to the penalty under section 530 (d) (4) of the Internal Revenue Code is also  
5 subject to a penalty of 33 percent of any portion of the distribution for which a  
6 subtraction is claimed under s. 71.05 (6) (b) 48.”

7 (END)



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRBa2132  
MES:kjf:ph

PMR

ASSEMBLY AMENDMENT,  
TO 2011 ASSEMBLY BILL 466

WANTED  
today

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 2, line 1: before that line insert:

3 “SECTION 1e. 71.05 (6) (b) 28. i. of the statutes is created to read:

4 71.05 (6) (b) 28. i. No modification may be claimed under this subdivision for  
5 an amount paid for tuition expenses and mandatory student fees, as described under  
6 this subdivision, if the source of the payment is an amount withdrawn from a  
7 Coverdell Education Savings Account, as described under 26 USC 530, and for which  
(8) a subtraction <sup>has been</sup> claimed under subd. 48.”.

9 **2.** Page 2, line 1: delete “SECTION 1” and substitute “SECTION 1m”.

10 **3.** Page 2, line 5: after that line insert:

11 “SECTION 1s. 71.83 (1) (cm) of the statutes is created to read:

12 71.83 (1) (cm) *Coverdell education savings accounts.* Any person who is liable  
13 for a penalty for federal income tax purposes under section 530 (d) (4) of the Internal

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4 is subject to the penalty under section 530 (d) (4) of the Internal Revenue Code is also  
5 subject to a penalty of 33 percent of any portion of the distribution for which a  
6 subtraction is claimed under s. 71.05 (6) (b) 48.”.

7 (END)

## Shovers, Marc

---

**From:** Hutkowski, Hariah  
**Sent:** Wednesday, February 01, 2012 1:47 PM  
**To:** Shovers, Marc  
**Subject:** FW: LRB 11a2133 Topic: Individual income tax subtraction for Coverdell education savings account contributions

**Attachments:** LRB a2133\_3

Could you draft us up the very SAME LRB for the Assembly side? Thanks,

Hariah Hutkowski  
*Legislative Assistant*  
**Rep. Thiesfeldt's office**  
1-888-529-0052  
FAX: 608-282-3652

Same as  
SA 1 to  
SB 364

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**From:** Julian, Jamie  
**Sent:** Monday, January 30, 2012 3:41 PM  
**To:** Hutkowski, Hariah  
**Subject:** FW: LRB 11a2133 Topic: Individual income tax subtraction for Coverdell education savings account contributions

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**From:** LRB.Legal  
**Sent:** Wednesday, January 25, 2012 3:28 PM  
**To:** Sen.Grothman  
**Subject:** LRB 11a2133 Topic: Individual income tax subtraction for Coverdell education savings account contributions

The attached proposal has been jacketed for introduction.

A copy has also been sent to:



11a21333.pdf (25  
KB)



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRBa2132/2  
MES:kjf:ph

RMR

ASSEMBLY AMENDMENT ,  
TO 2011 ASSEMBLY BILL 466

SOON

1 At the locations indicated, amend the bill as follows:

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4 71.05 (6) (b) 28. i. No modification may be claimed under this subdivision for  
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1 ~~Revenue Code is liable for a penalty equal to 33 percent of that penalty. The~~  
2 ~~department of revenue shall assess, levy, and collect the penalty under this~~  
3 ~~paragraph as it assesses, levies, and collects taxes under this chapter. A person who~~  
4 ~~is subject to the penalty under section 530 (d) (4) of the Internal Revenue Code is also~~  
5 ~~subject to a penalty of 33 percent of any portion of the distribution for which a~~  
6 ~~subtraction is claimed under s. 71.05 (6) (b) 48."~~

7 (END)